

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION THREE

THE PEOPLE,

Plaintiff and Respondent,

v.

THE NORTH RIVER INSURANCE
COMPANY, et al.

Defendants and Appellants.

B288030

(Los Angeles County
Super. Ct. Nos. SJ4473, BA444074)

APPEAL from a judgment and order of the Superior Court
of Los Angeles County, Christopher K. Lui and Michael C. Small,
Judges. Reversed.

Jefferson T. Stamp for Defendants and Appellants.

No appearance for Plaintiff and Respondent.

Defendants and appellants The North River Insurance Company (Surety) and Bad Boys Bail Bonds (bail agent) appeal a summary judgment on a \$125,000 forfeited bail bond and an order denying their motion to vacate forfeiture.

We reverse, concluding the entry of summary judgment on the forfeited bond was premature because the trial court had before it a pending motion to vacate the forfeiture.

FACTUAL AND PROCEDURAL BACKGROUND

On September 28, 2016, the Surety, through the bail agent, posted a \$125,000 bail bond to guarantee the appearance of criminal defendant Marcus Lamour. On December 5, 2016, Lamour failed to appear at the preliminary hearing. At that time, bail was declared forfeited and a bench warrant was issued.

On December 5, 2016, the clerk mailed notice of forfeiture, which stated that the bail agent had 185 days from that date to produce Lamour in court or to move to set aside the forfeiture.

On June 2, 2017, the bail agent moved to extend the appearance period pursuant to Penal Code section 1305.4.¹ On June 30, 2017, the trial court granted a 180-day extension of time, to December 27, 2017.

On December 26, 2017, the bail agent filed a motion to vacate forfeiture and exonerate the bond, on the ground that errors by an LAPD detective in processing an extradition warrant led to Lamour's release from custody in Florida. Alternatively, the motion argued that the court should toll time pursuant to section 1305, subdivision (e).

On January 4, 2018, prior to the hearing on the bail agent's motion, the clerk filed an application for entry of summary judgment on the forfeited bond. On January 5, 2018, the trial

¹ All unspecified statutory references are to the Penal Code.

court entered summary judgment on the bond in the amount of \$125,000 plus \$435 in court costs.

On January 17, 2018, the People filed opposition to the still pending motion by the bail agent to vacate forfeiture and exonerate the bond.

On January 26, 2018, the trial court denied the motion to vacate forfeiture and exonerate the bond.

On January 31, 2018, the Surety and the bail agent filed notice of appeal, specifying both the January 5, 2018 summary judgment and the January 26, 2018 order denying relief from forfeiture.²

CONTENTIONS

Appellants contend (1) the trial court acted in excess of its jurisdiction when it entered summary judgment while a timely filed motion to vacate forfeiture was pending, and (2) the bond is exonerated under section 1306, subdivision (c) because no summary judgment was entered within 90 days of the trial court's order denying relief from forfeiture.

² Although a summary judgment in a bail bond proceeding is a consent judgment, where the summary judgment was not entered in accordance with the consent given in the undertaking, the judgment may be appealed. (*People v. American Contractors Indemnity Co.* (2004) 33 Cal.4th 653, 663–664.) Further, an order denying a motion to vacate summary judgment on a bail bond forfeiture is an appealable order and is a proper vehicle for considering a jurisdictional attack on the summary judgment. (*People v. International Fidelity Ins. Co.* (2012) 204 Cal.App.4th 588, 592.)

DISCUSSION

1. *Premature entry of summary judgment requires reversal.*

a. *Standard of appellate review.*

“The statutory scheme governing bail forfeitures is found in . . . section 1305 et seq. These provisions must be carefully followed by the trial court, or its acts will be considered without or in excess of its jurisdiction. [Citation.]’ [Citation.] Where the bail statutes ‘ “require[] a court to exercise its jurisdiction in a particular manner, to follow a particular procedure, or to perform subject to certain limitations, an act beyond those limits is in excess of its jurisdiction.’ ” ’ [Citations.] Because of the harsh results of a forfeiture and the jurisdictional nature of statutory compliance, appellate courts carefully review the record to ensure strict statutory compliance. [Citation.] When the facts are undisputed and only legal issues are involved, we conduct an independent review. [Citation.]” (*People v. United States Fire Ins. Co.* (2015) 242 Cal.App.4th 991, 998—999.)

b. *General principles; premature entry of summary judgment is voidable.*

“When a defendant released on bail fails to appear as required, the trial court must declare a forfeiture of the bail bond in open court. (§ 1305, subd. (a).) Within 30 days of the forfeiture, a notice of forfeiture is served by the court clerk. If the amount of the bond exceeds \$400, the notice of forfeiture must be served by mail on the surety. (§ 1305, subd. (b).) Thereafter, the surety has a 180-day period, plus five days for service by mail (i.e., 185 days), within which to obtain relief from the forfeiture on certain statutory grounds (§ 1305, subds. (b)—(e); [citation]), including that the criminal defendant has appeared in court or has been surrendered into custody by the bail agent within the

185-day period. [Citations.] This 185-day period is commonly known as the exoneration period or the appearance period. [Citation.]” (*People v. United States Fire Ins. Co.*, *supra*, 242 Cal.App.4th at pp. 999—1000.) Pursuant to section 1305.4, the trial court may extend the exoneration period up to 180 days upon the filing of a motion supported by a showing of good cause. (242 Cal.App.4th at p. 1000.) If the motion for an extension of time is filed within the appearance period, it may be heard up to 30 days after the expiration of the appearance period. (§ 1305, subd. (j).)

Where a summary judgment “is prematurely entered under the bail forfeiture statutes (§ 1305 et seq.), the judgment is *voidable* (not void) and the surety may . . . move to have it set aside in the trial court by a timely motion or challenge it by direct appeal. [Citation.] The most obvious example of such prematurity is where the summary judgment was entered against the surety before the exoneration period expired. [Citation.] Less obvious, but of particular importance in the present case, is that *a summary judgment may be premature if it was entered while a timely motion for certain relief was pending* under the bail forfeiture statutes. [Citations.]” (*People v. United States Fire Ins. Co.*, *supra*, 242 Cal.App.4th at p. 1001, fn. omitted, second italics added.)

People v. Granite State Insurance Co. (2003) 114 Cal.App.4th 758 (*Granite State*) addresses the proper time to enter summary judgment on a forfeited bond. There, a surety filed a timely motion to vacate forfeiture and exonerate bail before the expiration of the exoneration period, and the matter was scheduled for hearing within the 30-day period following the expiration date. (*Id.* at p. 763.) However, the trial court

repeatedly continued the hearing and ultimately heard the matter more than five months after the expiration of the exoneration period. (*Id.* at pp. 762–763.) The trial court denied the motion to vacate forfeiture and exonerate bail, and it entered summary judgment on the bond within 90 days following the denial. (*Id.* at p. 762.) The surety moved to set aside the summary judgment, claiming the trial court lost jurisdiction to enter summary judgment more than 90 days beyond the expiration of the exoneration period. (*Id.* at pp. 762–763.)

Granite State found the trial court retained jurisdiction to enter the summary judgment. It reasoned, “[g]iven that subdivision (i) [now subdivision (j)] of section 1305 specifically authorizes the court to hear a motion to vacate forfeiture after the expiration of the exoneration period, if such a motion has been timely filed, summary judgment cannot be entered before the motion has been decided even if that decision occurs *after* the expiration of that period. [Citation.] To hold otherwise would require a court to enter summary judgment before reaching a decision on a motion to vacate the forfeiture, the hearing on which may have been properly extended for good cause as authorized by section 1305, subdivision (i), beyond 90 days from the expiration of the exoneration period, rendering those proceedings futile.” (*Granite State, supra*, 114 Cal.App.4th at p. 764.) *Granite State* concluded that the 90–day period to enter summary judgment does not begin to run until the pending motion to vacate forfeiture is denied. (*Id.* at p. 768.)

People v. Aegis Security Ins. Co. (2005) 130 Cal.App.4th 1071 (*Aegis*) is also instructive. There, “the surety filed its motion to extend on the last day of the appearance period; thus it was timely. [Fn. omitted.] Before it could be heard, however, the

trial court entered summary judgment on the bond. The question [was] whether the pending motion extended the appearance period until it could be heard, thus postponing ‘the date upon which [summary judgment] may first be entered.’ (§ 1306, subd. (c).)” (130 Cal.App.4th at p. 1075.)

Guided by *Granite State*, the *Aegis* court reasoned, “If [the surety’s] statutorily authorized motion to extend the appearance period did not postpone the date on which the trial court could first enter summary judgment, the motion would be futile. Such a construction of section 1305.4 would contravene the mandate to strictly construe the bail forfeiture statutes in favor of the surety. [Citation.] Accordingly, we conclude the summary judgment was prematurely entered.” (*Aegis, supra*, 130 Cal.App.4th at p. 1076.)

Similarly, in *People v. United States Fire Ins. Co., supra*, 242 Cal.App.4th 991, a surety filed a timely extension motion under section 1305.4, but “as in *Aegis*, the summary judgment was entered before the hearing on the motion for an extension, while said motion was pending. Consequently, the summary judgment . . . was prematurely and improperly entered in violation of section 1306, subdivision (a). As such, the summary judgment was . . . *voidable* and subject to being set aside upon a timely challenge in the trial court and/or a timely appeal from the summary judgment. [Citation.]” (242 Cal.App.4th at p. 1003.)

c. In the instant case, the trial court prematurely entered summary judgment on the forfeited bond, prior to the hearing on the motion to vacate forfeiture and exonerate the bond.

The relevant chronology is as follows: On June 30, 2017, the trial court granted a motion under section 1305.4 for a 180-day extension of the appearance period, to December 27, 2017. On December 26, 2017, *before the appearance period expired*, the

bail agent filed a motion to vacate forfeiture and exonerate the bond, or alternatively, to toll time pursuant to section 1305, subdivision (e). On January 5, 2018, before the hearing on that pending motion, the trial court entered summary judgment on the forfeited bond. On January 26, 2018, the trial court heard and denied the motion to vacate forfeiture and exonerate the bond.

Because the bail agent filed a timely motion to vacate forfeiture and exonerate the bond before the appearance period expired, the trial court could not enter summary judgment on the forfeited bond until after it heard and denied the pending motion to vacate forfeiture, which did not occur until January 26, 2018. Thus, the summary judgment entered on January 5, 2018 was premature and therefore voidable, either on a motion to vacate forfeiture or on appeal. (*People v. United States Fire Ins. Co.*, *supra*, 242 Cal.App.4th at p. 1001.)

Further, because the trial court failed to enter summary judgment within 90 days of the January 26, 2018 order denying the motion to vacate the forfeiture, it lost its authority to do so. “Section 1306, subdivision (c), sets forth the 90-day time frame within which the summary judgment must be entered: ‘If, because of the failure of any court to promptly perform the duties enjoined upon it pursuant to this section, summary judgment is not entered within 90 days after the date upon which it may first be entered, the right to do so expires and the bail is exonerated.’” (*People v. United States Fire Ins. Co.*, *supra*, 242 Cal.App.4th at p. 1000; accord, *People v. American Contractors Indemnity Co.* (2015) 238 Cal.App.4th 1041, 1044.)

Further, the 90-day limit for entering summary judgment applies even where (as here) a surety’s appeal is pending. The

pendency of an appeal from an order denying a surety's motion to vacate forfeiture does not deprive the trial court of jurisdiction to enter summary judgment on the forfeited bond. (*People v. Indiana Lumbermens Mutual Ins. Co.* (2014) 226 Cal. App. 4th 1, 10; 4 Witkin, Cal. Crim. Law (2018 Supp.) Pretrial Proceedings, § 127, p. 372.)

Thus, because summary judgment was not entered within 90 days after the January 26, 2018 order denying the motion to vacate the forfeiture, the trial court's authority to enter summary judgment expired and the bail is exonerated. (§ 1306, subd. (c).)

DISPOSITION

The summary judgment is reversed, the forfeiture is vacated, and the bail bond is exonerated. Appellants shall bear their own costs on appeal.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

EDMON, P. J.

We concur:

LAVIN, J.

DHANIDINA, J.